

3 FAM 8600 DOMESTIC STAFF

3 FAM 8610 DOMESTIC STAFF EMPLOYMENT

(CT:PER-678; 06-22-2012)
(Offices of Origin: HR/OE)

3 FAM 8611 POLICY AND AUTHORITY

(CT:PER-627; 06-07-2010)
(State, USAID, Commerce Agriculture, BBG)
(Applies to Foreign Service Employees)

- a. It is the policy of State, USAID, Commerce, and Agriculture that all U.S. Government employees, their dependents and members of household, should treat their domestic staffs fairly and provide them employment conditions which are in accordance with local law and custom in the host country and are consonant with U.S. labor standards and the William Wilberforce Trafficking Victims Protection Reauthorization Act of December 2008 (Public Law 110-457).
- b. Domestic staff who are compensated under official residence expense (ORE) funds and other domestic staff for U.S. Government employees assigned to missions abroad are neither Federal employees nor employees of the U.S. mission. They are employees of the individual(s) in whose home they work. The lack of direct employee/employer relationship with the Federal Government should be clearly understood by all administrative staff members who deal with ORE employees (or any other domestic workers), both when they enter on duty and periodically during their employment.

3 FAM 8612 EMPLOYER RESPONSIBILITY

3 FAM 8612.1 Officials Designated to Receive Official Residence Expense (ORE) Funds

(CT:PER-627; 06-07-2010)

(State, USAID, Commerce Agriculture, BBG)

(Applies to Foreign Service Employees)

- a. U.S. Government principal representatives who are designated to receive ORE funds are individually responsible for providing comparable wages, fringe benefits, terms of employment, and working conditions for domestic staff, in accordance with local law and custom.
- b. ORE-designated representatives may be reimbursed from ORE funds, in accordance with Standardized Regulations (Government Civilians, Foreign Areas), sections 411e and 451a, for those domestic staff whose salaries are properly reimbursable from ORE funds. Claims for reimbursement of fringe benefits made to or on behalf of official residence staff members are shown on ORE vouchers as a "servants' maintenance" expense.

3 FAM 8612.2 U.S. Government Employees Employing Domestic Staff Abroad

(CT:PER-627; 06-07-2010)

(State, USAID, Commerce Agriculture, BBG)

(Applies to Foreign Service Employees)

- a. All U.S. Government employees who employ domestic staff, and their dependents and members of household, are individually expected to:
 - (1) Comply with the obligations and statement of requirements below on domestic staff employment to the extent applicable; and
 - (2) Deal fairly and reasonably with their employees. All U.S. Government employees should clearly communicate to domestic staff in writing, whether host- or third-country nationals, the terms of employment, including the duties of the position and the regular working hours, and they should provide overtime pay for service beyond those hours.
- b. For U.S. Government employers who do not receive ORE funds, no direct reimbursement of any Social Security taxes paid on behalf of domestic servants is possible, although this tax is one of the factors considered in determining the amount of any post allowance for U.S. employees.
- c. All U.S. Government employees, under chief-of-mission authority whose domestic staff obtain immigration benefits (i.e., sponsorship) as a result of the work relationship with the U.S. Government employee, must provide employment contracts to domestic staff, signed by the employee and domestic staff, with copies to post management, which are in compliance with local labor laws and include the following elements:

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- (1) Description of duties: For example, cleaning, gardening, childcare, etc.;
- (2) Hours of work: It is generally expected that a minimum of 35-40 hours a week of paid employment will be provided. The contract should state that the domestic employee will be provided a minimum of at least 1 full day off each week. The employment contract should also state whether the domestic employee will be provided paid holidays, sick days, and vacation days. The contract should include a statement that the domestic worker's presence in the employer's home will not be required except during working hours;
- (3) Wages: The contract must state the hourly/weekly/monthly wage to be paid to a domestic staff worker, and when that wage will be paid. The contract must state what deductions are to be taken from the wages. If any deduction is taken for meals or lodging, it must be no more than is reasonable. The contract must include a provision for severance and/or separation payments on termination of the employment if required by local law;
- (4) Overtime work: The contract must state that any hours worked in excess of the normal number of hours worked are considered overtime and should be compensated consistent with local law; and
- (5) Transportation to and from home country: If applicable, and in keeping with host-country laws, the contract should state if transportation to and from the worker's home country is included as a term of service.

The U.S. Government employee, as well as dependents and members of household, must adhere to the contract provisions.

- d. Additionally, U.S. Government employees abroad under chief-of-mission authority who sponsor nonhost-country national domestic workers must state in their contracts that:
 - (1) The domestic worker's passport and visa will be in the sole possession of the domestic worker;
 - (2) A copy of the contract and other personal property of the domestic worker will not be withheld by U.S. Government employees for any reason; and
 - (3) Their sponsorship for work permits and immigration benefits may not be used as leverage to compel service.
- e. U.S. Government employees, dependents, and members of household may not use physical force or threat of force to compel labor, services or sexual activity from a domestic worker, and must abide by all applicable local laws.

3 FAM 8612.3 Violations and Penalties

(CT:PER-627; 06-07-2010)

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(Applies to Foreign Service Employees)

- a. Any report of abuse or mistreatment of domestic staff, including but not limited to activities which rise to the level of human trafficking, whether such actions are undertaken by a U.S. Government employee, dependent, or member of household abroad with the employee, is a matter of grave concern to the Department. Such reports will be fully investigated by Diplomatic Security and/or the Office of the Inspector General, and if substantiated can result, as appropriate, in either administrative penalty and/or referral to the Department of Justice for criminal prosecution of the employee and criminal prosecution of dependents and members of household. Employees engaging in such misconduct will be subject to discipline up to and including removal from employment.
- b. Furthermore, Section 3271 of Title 18 of the United States Code specifically extends the reach of Federal trafficking statutes to U.S. facilities abroad:

"Whoever, while employed by or accompanying the Federal Government outside the United States, engages in conduct outside the United States that would constitute an offense under chapter 77 or 117 of this title if the conduct had been engaged in within the United States or within the special maritime and territorial jurisdiction of the United States shall be punished as provided for that offense."
- c. Accordingly, all U.S. Government employees who engage in human trafficking offenses (including domestic servitude) are subject to prosecution. The Department of Justice can also in some circumstances seek to prosecute in the United States accompanying family members or members of household of U.S. Government employees living abroad who engage in human trafficking of domestic staff. No such individual posted abroad is protected from prosecution by U.S. authorities because he or she may enjoy immunity from local jurisdiction.

3 FAM 8613 SPONSORING DOMESTIC STAFF FOR VISAS TO WORK IN THE UNITED STATES

(CT:PER-627; 06-07-2010)

(State, USAID, Commerce Agriculture, BBG)

(Applies to Foreign Service Employees)

See 9 FAM 41.31, Notes.

3 FAM 8614 THROUGH 8619 UNASSIGNED